

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

EUSEBIO IKE DEVARGAS,

Plaintiff,

vs.

No. CV 21-00897 KG/GJF

UNITED STATES OF AMERICA
U.S.C. 922,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court under Fed. R. Civ. P. 41(b) on the pro se Civil Complaint filed by Eusebio Ike DeVargas (Doc. 1). The Court will dismiss the Complaint without prejudice for failure to comply with statutes, failure to comply with a Court order, and failure to prosecute this proceeding.

Plaintiff Eusebio Ike DeVargas is a federal detainee at the Cibola County Detention Center and is proceeding pro se. (Doc. 1). Plaintiff filed his Complaint on September 13, 2021. (Doc. 1). Plaintiff's filings consist of a one-page Civil Complaint "contending that USC 922 is prejudicial therefore making it unconstitutional, U.S.C. violates the 2nd, the 9th, the 10th, and 14th amendments of the United States Constitution." (Doc. 1 at 1). He seeks "an Injunction against this U.S.C. Code and that the defendant be made to repay the defendant and all others affected by the defendant to be paid punitive damages." (Doc. 1 at 1). Plaintiff did not pay the filing fee or submit an application to proceed *in forma pauperis* at the time he filed the Complaint.

The Court entered an Order to Cure Deficiencies on November 15, 2021, directing Plaintiff DeVargas to cure deficiencies in the form of his Complaint and to either pay the filing fee or submit an application to proceed under 28 U.S.C. § 1915 within thirty days of entry of the Order. (Doc. 4). The Court also provided Plaintiff with a form Prisoner's Civil Rights Complaint and Application to Proceed in District Court Without Prepayment of Fees or Costs, together with instructions. (Doc. 4). The Order advised Plaintiff that, if he failed to cure the deficiencies within the 30-day time period, the Court could dismiss this proceeding without further notice. (Doc. 4 at 2).

Plaintiff DeVargas did not comply with the Court's November 15, 2021, Order. Rather than submitting the form Prisoner's Civil Rights Complaint supplied by the Court, Plaintiff filed a Motion to Proceed, asking to be allowed to proceed under either *Bivens* or § 1983. The Motion to Proceed did not cure any of the deficiencies in the form of his Complaint. Plaintiff also did not submit the form Application to Proceed in District Court Without Prepayment of Fees or Costs or pay the filing fee for this proceeding.

More than 30 days elapsed after entry of the Court's Order to Cure Deficiency and Plaintiff has not filed a complaint in proper form, paid the \$402 filing fee, or submitted an application to proceed under § 1915 in proper form. Plaintiff's case is a civil action and under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required to collect the filing fee from the Plaintiff or authorize Plaintiff to proceed without prepayment of the fee. Plaintiff has failed to either pay the \$402.00 filing fee or submit an application to proceed under § 1915 in proper form. The Court may dismiss a proceeding under Fed. R. Civ. P. 41(b) for failure to comply with statutes or rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003). Therefore, the Court will dismiss this civil proceeding pursuant to Rule 41(b)

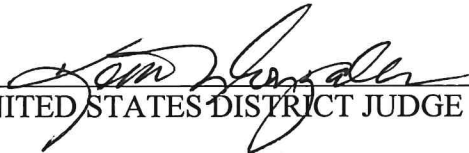
for failure to comply with 28 U.S.C. §§ 1914, 1915, failure to comply with the Court's Order of November 15, 2021, and failure to prosecute this proceeding.

Also pending before the Court are Plaintiff's Motion to Correct and Clarify Civil Complaint (Doc. 2), Motion to Enter Evidence (Doc. 3), and Motion to Proceed (Doc. 5). The Court will deny all pending motions as moot in light of the dismissal of this case.

IT IS ORDERED:

(1) the Motion to Correct and Clarify Civil Complaint (Doc. 2), Motion to Enter Evidence (Doc. 3), and Motion to Proceed (Doc. 5) filed by Eusebio Ike DeVargas are DENIED as moot; and

(2) the Civil Complaint filed by Plaintiff Eusebio Ike DeVargas on September 13, 2021 (Doc. 1) is DISMISSED without prejudice under Fed. R. Civ. P. 41(b) for failure to prosecute or to comply with 28 U.S.C. §§ 1914 and 1915 and failure to comply with the Court's November 15, 2021, Order.


UNITED STATES DISTRICT JUDGE